

part of the purchase price" in the event that a contract of purchase came to be executed in due course. This is plain beyond peradventure. The condition stipulated that the respondent should sign a contract of purchase within two weeks of being required to do so.

The contract of purchase was, therefore, inchoate, of the type where a purchaser of land agrees to purchase subject to a proper contract to be prepared by the vendor's solicitors. As Pollock M.R. said in *Chillingworth v. Esche*:—⁽⁴⁾

"I think when you look at the words here used that what was intended was that the whole document should be conditional on the execution of a proper contract, to be prepared by the vendor's solicitors. . . . and I think that the intention of the parties was that the full conditions should be considered in a further contract, and that until that further contract was executed there should be no binding contract for the purchase of the property. . . . this court having come to the conclusion that the nature of that agreement was inchoate, it follows that if, at a time before execution of the further agreement, negotiations were broken off, the deposit ought to be repaid to the purchasers."

See also *Hatzfeldt-Wildenburg v. Alexander* ⁽⁵⁾ (per Parker J.) and *Coope v. Ridout*. ⁽⁶⁾

The very fact that learned counsel submitted, in argument, that there was "not much help in the reservation form", that he was relying on the conduct of the parties prior thereto, and that, in one of the grounds of appeal, he complained that the appellate judge "failed to direct his mind and give full consideration to paragraphs 2, 3 and 4 of Exhibit P.3 (the draft agreement) which had provided for the forfeiture of the deposit in the event disclosed therein" speaks volumes of the lack of merits in this appeal. It was because the terms were unacceptable that the respondent refused to enter into the purchase. How could she possibly be bound by the terms of an agreement which she had refused to sign?

Indeed, a perusal of the said agreement shows that it was a trap for the unwary. It runs to 14 whole pages of type, contains 24 clauses and 3 schedules. Although clause 7 declared the price and amount of monthly instalments payable to be inclusive of interest, it was further provided in clause 9 as follows:—

"9. Notwithstanding the provisions relating to the rate of interest stipulated in Clause 7 above and specified in the Third Schedule hereto the vendor may from time to time by notice in writing of his intention so to do increase the aforesaid rate of interest."

Had the respondent objected to this clause alone — although, in my opinion many other objections could properly have been taken to the contract offered for her signature — she was plainly entitled to reject the contract.

A In fact, when she paid the booking fee, neither she herself, nor Skyline too, for that matter, were aware of the precise terms of the contract which did not yet exist even in draft. Besides the price, the rate of instalments and interest — both of which could be increased and varied "at the discretion of the vendor" — none of the terms and conditions were made known to and accepted by the respondent. The condition (if it can be so called) expressed in the reservation form thus left the terms of the contemplated contract so nebulous and vague that no enforceable contract between the parties could have arisen thereby: see *Scammell v. Ouston*.⁽⁷⁾

C This appeal accordingly must be dismissed with costs.

Appeal dismissed.

Solicitors: *Eugene Lye & Co.; Heng, D Cheng & Co.*

ABDUL HAMID & ANOR. v. TAN CHU KIM

[O.C.J. (Choor Singh J.) July 4, 1969]

[Singapore — Suit No. 888 of 1968]

E *Damages — Domestic servant — Disablement due to injuries sustained — Employment by British Services personnel — Gradual full out of British Services — Future employment.*

F *Damages — Leg 2½" Shortening — Osteoarthritis in right knee.*

G *Damages — Hand — Compound fracture of right metacarpal bone and fracture dislocation of proximal interphalangeal joint of right ring finger.*

In assessing damages for loss of future earnings of a domestic servant employed by a U.K. based civilian employee of the British Services in Singapore, the prospects of her regular employment after the complete withdrawal of the British Services from Singapore by the end of 1971, have to be taken into consideration.

CIVIL SUIT.

R. Ramason for the plaintiff.

Y.C. Chin for the defendant.

Cur. Adv. Vult.

I **Choor Singh J.:** The second plaintiff in this suit is the wife of the first plaintiff and on the 8th August, 1967 at about 8 p.m. she was riding pillion on a motor-cycle ridden by her husband along Orange Grove Road, Singapore, when their motor-cycle was knocked down by a car driven by the defendant. Both plaintiffs sustained injuries and they now claim damages from the defendant in respect of those injuries.

The first plaintiff's version of the accident is as follows. He was travelling about three or four feet from left edge of the road at a

speed of 20 m.p.h. He saw the defendant's car coming from the opposite direction. When the car was about to cross him it suddenly came straight towards him. He attempted to avoid it but failed to do so. The car collided with the front part of his motor-cycle and it was the front offside of the car which hit his motor-cycle. He and his wife were flung on to the left side grass verge. The car ended up in the drain on the left side of the road. He and his wife were both injured and were taken to hospital in an ambulance.

The defendant's version is that he was travelling along Orange Grove Road in the direction of Orchard Road and was doing between 20 and 25 m.p.h. He was travelling on his correct side and was one or two feet from the left kerb. There was a sharp bend in the road and as he came out of this bend he saw a motor-cyclist coming from the opposite direction. The motor-cyclist came very fast and he did not have time to avoid him. After the impact he lost control and the car glided on to the wrong side of the road and finished up in the drain. Under cross-examination he admitted that the collision took place when he came out of a right hand bend. He admitted further that he took the bend at 25 m.p.h.; that he did not know on what part of the road the impact took place; that he might have crossed over to the wrong side of the road a foot or so and that he lost control of his car after the impact.

Counsel for the defendant submits that the impact took place in the middle of the road and therefore both the first plaintiff and the defendant were equally to blame for the accident. I am unable to accept this submission because it is not supported by the evidence in this case.

I accept the first plaintiff's version of the accident which is supported by the evidence of his wife. In my opinion it is clearly established that the motor-cycle was travelling on its correct side of the road when the impact took place. This is so not only because of the evidence of the two plaintiffs but also because the defendant concedes that he may have gone a foot or so over to the wrong side of the road. In my opinion what happened was that the defendant in coming out of a right hand bend went over to the wrong side of the road and collided with the plaintiff's motor-cycle which was travelling on its proper side of the road. The defendant was therefore clearly at fault. The accident was due solely to the negligence of the defendant in driving on to the wrong side of the road and in failing to slow down, swerve or otherwise avoid the collision. In my opinion there was no contributory negligence on the part of the first plaintiff.

A The first plaintiff sustained a compound fracture of the right metacarpal bone and a fracture dislocation of the proximal interphalangeal joint of right ring finger. He also claims \$48 for transport expenses incurred in 12 trips to General Hospital and \$7 for transport expenses incurred on seven trips to an outdoor clinic where he went for medical attention and \$406.75 for repairs to his motor-cycle.

B I award him \$3,000 as damages for the injuries sustained by him in this accident and \$55 for transport expenses incurred in travelling to the General Hospital and the outdoor clinic. As regards the claim of \$406.75 for repairs to his motor-cycle, I consider this to be on the high side. According to the police officer who investigated this accident the parts of the motor-cycle which were damaged were the handle bar, the front mudguard, the number plate and both the front forks. Even if all these parts were replaced by new parts I do not think that their cost would amount to \$406.75. I agree with counsel for the defendant that the first plaintiff's claim for the cost of the repairs to the motor-cycle is grossly exaggerated. Although a receipted bill for \$406.75 has been produced, the person who carried out the repairs was not called as a witness and therefore counsel for the defendant has been denied the opportunity of cross examining him to ascertain why the repairs cost as much as \$406.75. I do not think that the repairs to the motor-cycle would have cost more than \$150 and accordingly I award \$150 for this item of the claim. In the result I award general damages to the first plaintiff in the sum of \$3,000 and another \$205 as special damages.

C The second plaintiff sustained much more serious injuries. She had a fracture of the right radius and ulna, compound comminuted supracondylar fracture of the right femur and a fracture of the right first metatarsal bone. She was in hospital for over three months and had to continue treatment as an out patient for several months. She has now a 2½ inch shortening of the right leg and movement of the right knee is limited in 10° short of extension and flexed up to 80° i.e. a range of 70°. There is evidence of osteoarthritis in the right knee. The recovery from the other fractures is excellent. In view of the shortening of the right leg and the marked osteoarthritic changes in the knee, she will no longer be able to perform her occupation as a domestic servant. She will however be able to do household duties of a minor degree. The question of damages for pain, suffering and disablement due to the injuries sustained in this accident does not present much difficulty because in my opinion,

taking into consideration all her injuries, her age and her station in life, a sum of \$20,000 will amply compensate her. What is much more difficult is the assessment of damages for loss of future earnings. She was at the time of the accident employed as a domestic servant by a U.K. based civilian employed by the British Services in Singapore. She was paid \$160 p.m. Previous to that she was employed by a military officer at \$150 p.m. It is well-known that the British Services are gradually pulling out of Singapore and there will be a complete withdrawal by the end of 1971. The second plaintiff is now unable to work as a domestic servant. What is her loss in future earnings? Could she have had regular employment at \$160 p.m. till the end of 1971? What salary would she have received after 1971? For how many years would she have worked as a domestic servant? These are some of the questions to which answers must be found.

The second plaintiff is 24 years old. She says she would have worked for another 15 years. She has three children aged 6, 5 and 4. They were looked after by her mother when she was employed as a domestic servant. She lived at her employer's residence and came home to visit her children once a week. What would have happened if her mother had died or for some other reason was unable to look after the second plaintiff's children? Would the second plaintiff in those circumstances have stopped work as a domestic servant in order to remain at home to look after her children? This is another factor which has to be taken into consideration in assessing loss of future earnings.

In my opinion she would most probably have been in regular employment as a domestic servant with the Service personnel until about the end of 1971 but not at \$160 p.m. As more and more Service personnel leave Singapore there will be an abundance of servants looking for employment and wages are bound to fall if they have not already fallen. The accident occurred on 8th August, 1967. In my opinion the salary she would have earned till, say, August 1971 i.e. for a period of four years from the date of the accident would have averaged \$120 p.m. A sum of \$5,112 invested at five per cent will produce \$120 p.m. for four years. After August 1971 I do not think she could have earned more than \$80 p.m. as a domestic servant employed by an Asian family. There will be a glut of domestic servants available when the British Services have completely withdrawn from Singapore. Having regard to all the usual factors that are taken into consideration when assessing damages for lost of future earnings I would award her \$80 p.m. for another six years. A sum of \$4,876.80 invested at five per cent will produce \$80 p.m. for six

A years. The second plaintiff claims \$412 for transport expenses incurred on 103 visits to the General Hospital as an out-patient. Counsel for the defendant submits that this claim is exaggerated. The second plaintiff did not adduce any evidence in support of this claim. She stated that each trip by taxi cost her \$4 and that she had to make such a large number of trips because she was undergoing physiotherapy treatment at the General Hospital thrice a week. In my opinion she was speaking the truth and I would allow her claim for \$412. In the result I award her \$29,988.80 as general damages and another \$412 as special damages.

C There will be judgment for the first plaintiff in the sum of \$3,205 and for the second plaintiff in the sum of \$30,400.80. The defendant will pay the plaintiffs' costs of this action as taxed. The amount of the judgment in favour of such plaintiff is to be paid to the Public Trustee in trust for the plaintiffs. D There will be the usual order for payment of costs by the Public Trustee out of the monies in his hands.

Judgment for the plaintiffs.

Solicitors: R. Ramason; Braddell Bros.

RE WONG TEE LIAN

[O.C.J. (Raja Azlan Shah J.) July 11, 1969]

F [Kuala Lumpur — Bankruptcy No. 50 of 1969]

Bankruptcy — Executor of estate — Whether can be adjudged bankrupt in his personal capacity for debts of his testator's business incurred after his death.

G The question raised in this petition was whether an executor can be adjudged bankrupt in his personal capacity for the debts of his testator's business incurred after his death.

Held: an executor can be adjudged bankrupt in his personal capacity for the trade debts of the testator incurred after his death, provided the executor was in the first place sued in his personal capacity.

Cases referred to:—

- (1) *In Re Fisher & Sons* [1912] 2 K.B. 491.
- (2) *Labouchere v. Tupper* (1857). 34 E.R. 670; 11 Moore 198.
- (3) *Re Evans* (1887), 34 Ch. D. 597.
- (4) *Ex parte Garland* (1804), 32 E.R. 786; 10 Ves. Jun. 110.

I BANKRUPTCY PETITION.

K.C. Choo for the petitioning creditor.

G. Vadivelu for the judgment debtor.

Cur. Adv. Vult.

Raja Azlan Shah J.: The question that is raised in this petition is whether an executor